

STATE OF MICHIGAN
COURT OF APPEALS

TRACYE RIDLEY,

Plaintiff-Appellee,

v

THOMPSON TOWERS LIMITED DIVIDEND
HOUSING ASSOCIATION and INDEPENDENT
MANAGEMENT SERVICES,

Defendants-Appellants,

and

CARSWELL GROUP,

Defendant.

UNPUBLISHED

May 13, 2003

No. 239068

Wayne Circuit Court

LC No. 00-034955-NO

Before: Wilder, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Defendants appeal by leave granted the order denying their motion for summary disposition pursuant to MCR 2.116(C)(10) in this negligence action involving the criminal acts of a third party. We reverse.

This case arises out of a domestic dispute between plaintiff, a resident in defendant's apartment building, and her former live-in boyfriend, Curtis Brewer. The parties agree that, shortly before the assault, plaintiff had advised defendant's employee, Richard Allen, that Brewer should no longer be allowed inside the building.¹ It is undisputed that plaintiff did not inform Allen that Brewer had threatened her and that plaintiff did not tell Allen her reasons for wanting Brewer barred from the building. The parties also agree that when Brewer arrived at the building he was carrying a golf club.

It is disputed how Brewer entered the lobby of the building, which had locked doors that could be pushed open from inside the lobby. Allen could not state whether he opened the door

¹ Allen was a tenant in the building and was paid by defendants to sit at the entrance on Saturday evenings to have visitors sign in. He was not a security guard and was not armed.

for Brewer, but indicated that if he did so it was only to tell Brewer that he was unwelcome in the building. Allen also testified that there were other tenants in the lobby, going in and out, and Brewer could have entered when one of the tenants went through the door. Plaintiff admitted that she did not see Allen open the door and that there were others in the lobby at the time.

When Allen saw Brewer in the lobby, he told Brewer that plaintiff did not want to see Brewer any more. Brewer responded, “Are you going to stop me?” Within seconds, Brewer saw plaintiff and began beating plaintiff with the club. Allen immediately called the police.

Plaintiff then filed the present negligence suit. Defendants moved for summary disposition, arguing that they had fulfilled their duty to plaintiff by calling the police and that plaintiff’s injuries were not foreseeable. The trial court denied the motion. Essential to the trial court’s denial of the motion was the court’s finding that plaintiff’s injuries were foreseeable “based upon the representation of the plaintiff” and based upon the fact that Allen “knew full well it was a conflict between those two.”

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). This Court reviews a trial court’s grant or denial of summary disposition de novo. *Spiek, supra*.

The scope and extent of the duty to protect against third parties is essentially a question of public policy, *Williams v Cunningham Drug Stores, Inc*, 146 Mich App 23, 26; 379 NW2d 458 (1985), and is premised on the defendant having control that makes him best able to provide safety. *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499; 418 NW2d 38 1(1988); *Krass v Tri-County Security, Inc*, 233 Mich App 661, 670; 593 NW2d 578 (1999). Among the relationships that may impose a duty to protect against third parties are landlord/tenant. *Williams, supra* at 429 Mich 499.

A landlord owes a special duty to his tenants and their guests to protect them from unreasonable risks resulting from foreseeable activities occurring within the common area of the landlord’s premises, including risks from foreseeable criminal activities. *Stanley v Town Square Cooperative*, 203 Mich App 143, 148-149; 512 NW2d 51 (1993). Whether the risk of harm from third-party criminal activity is foreseeable in a particular case is generally a question of fact for the jury. *Holland v Liedel*, 197 Mich App 60, 63; 494 NW2d 772 (1992). However, when the facts are not disputed, it is proper for the court to make the legal conclusion. *Moll v Abbott Laboratories*, 444 Mich 1, 28; 506 NW2d 816 (1993).

In *Stanley v Town Square Cooperative*, 203 Mich App 143; 512 NW2d 51 (1993), this Court stated:

A landlord has a duty to act because he possesses exclusive control over the common areas of the property. The duty is owed to tenants and their guests

because they are the landlord's invitees. The duty to protect those persons from the criminal acts of third parties exists because criminal acts can be the foreseeable result of an unreasonably dangerous condition on the land. Landlords should anticipate that unsecured buildings provide opportunities for criminals to prey on victims away from the eyes and ears of police and witnesses, and the potential danger lurking in the interior of a building is not open and obvious to an unsuspecting invitee. Tenants and their guests rely upon responsible landlords to exercise reasonable care to protect them from foreseeable criminal activities inside the premises, and when those in control fail to exercise reasonable care to provide for the safety of invitees, a dangerous condition is created on the premises that presents an unreasonable risk of harm. Thus, landlords have a duty to take reasonable precautions, such as installing locks on doors and providing adequate vestibule lighting, and may be liable in tort if they fail to do so. [*Stanley, supra* at 150 (emphasis added).]

The question, therefore, is whether defendants negligently failed to take steps to protect plaintiff from foreseeable criminal activity. Presumably, the "dangerous condition" presenting an unreasonable risk of harm on which plaintiff relies is Allen's alleged act of opening the door and allowing Brewer entry into the lobby. The trial court concluded that "based upon the representation of the Plaintiff, it was foreseeable that there could be an injury to the plaintiff." However, the record does not support the factual basis for the trial court's legal ruling that the criminal activity was foreseeable. Plaintiff testified that her past relationship with Brewer had been friendly and non-violent and that Brewer previously had visited her apartment without incident. The record does not suggest any violence before the present incident. Plaintiff has not provided evidence to indicate that defendants were on notice of criminal activity.² Although plaintiff informed Allen that she no longer wished to permit Brewer access to her apartment, plaintiff testified that she did not tell Allen why she no longer wanted Brewer to have access to her apartment and did not tell Allen that Brewer had threatened her. No evidence was presented that plaintiff was behaving in a fashion that would suggest that she was frightened or upset. To the contrary, plaintiff came down to the lobby of the building from her tenth floor apartment to inform Allen that she did not want Brewer to have access to her apartment. Plaintiff then remained in the lobby of the building until Brewer arrived. Even assuming there is a disputed issue of fact as to whether Allen let Brewer into the lobby, this fact is not relevant to a determination of whether criminal activity was foreseeable. Under these circumstances, defendants had no duty to protect plaintiff and, therefore, the trial court erred by denying defendants' motion for summary disposition.

² Plaintiff suggests that criminal activity was foreseeable once Brewer showed up with a golf club in his hand. However, it is undisputed that Allen was not informed that Brewer had threatened plaintiff and was not informed of the reason why plaintiff no longer wanted to see Brewer. Further, Allen testified that he did not see the golf club until Brewer was already inside the lobby.

Reversed.

/s/ Kurtis T. Wilder
/s/ E. Thomas Fitzgerald

I concur in result only.

/s/ Brian K. Zahra